

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0583**

State of Minnesota,
Appellant,

vs.

Daniel Michael Knoll,
Respondent.

**Filed September 18, 2023
Reversed and remanded
Smith, Tracy M., Judge**

Carver County District Court
File No. 10-CR-21-944

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Jeffrey D. Albright, Chaska, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this sentencing appeal, appellant State of Minnesota challenges the district court's decision granting respondent Daniel Michael Knoll a downward dispositional departure from the presumptive prison sentence for fifth-degree controlled-substance possession.

Because the district court did not identify—and the record does not support—substantial and compelling reasons to depart from the presumptive guidelines sentence, we reverse and remand for the district court to impose a guidelines sentence.

FACTS

On November 12, 2021, the state charged Knoll with one count of felony fifth-degree controlled-substance possession, in violation of Minnesota Statutes section 152.025, subdivision 2(1) (2020), and one count of gross misdemeanor third-degree driving while impaired (DWI), in violation of Minnesota Statutes section 169A.20, subdivision 1(2) (Supp. 2021). The probable-cause section of the complaint alleged that an officer responded to a crashed vehicle that had struck a guardrail. The driver, identified as Knoll, exhibited signs of intoxication. After the officer conducted field sobriety tests, Knoll was arrested for DWI. Officers later found in the vehicle three bags of crystalline substance that field-tested positive for methamphetamine. The complaint also alleged that Knoll had a prior qualifying DWI-related conviction.

Knoll pleaded guilty to both charges pursuant to a plea agreement. According to the agreement, Knoll would move for a downward dispositional departure and the state would request an 18-month prison term for fifth-degree drug possession, which is at the bottom of the presumptive range based on Knoll's criminal-history score of six. *See* Minn. Sent'g Guidelines 4.C (2020). The presentence investigation report (PSI) recommended the presumptive executed guidelines sentence of 21 months. The PSI acknowledged that Knoll made progress in reporting to probation, establishing and maintaining housing, and

maintaining consistent employment but explained that those factors were offset by Knoll's continued use of methamphetamine and his criminal-history score of six.

Knoll moved for a downward dispositional and/or durational departure. At a sentencing hearing held on January 13, 2023, the district court explained that it had Knoll's motion for a downward departure "under advisement" but noted that "there's been some developments and testing issues." The district court stated it would continue the sentencing hearing to allow Knoll "a chance to test today with his probation officer and to do any independent testing he may want to do" due to potential false positives from Knoll's prescription medication. The state opposed the continuance, arguing that Knoll had tested positive on multiple occasions for amphetamine and methamphetamine, that Knoll's prescription medication would not cause a positive test for methamphetamine, and that Knoll had not shown up for testing four days earlier. The district court continued the sentencing hearing until February 17, 2023.

At the continued sentencing hearing, the state argued for an 18-month prison term for the fifth-degree drug-possession offense. It argued Knoll was neither particularly amenable to treatment in a probationary setting nor particularly amenable to probation. The state asserted that Knoll had tested positive for drugs on multiple occasions and that he had missed 22 tests in 2022 and already missed multiple tests in 2023. It further asserted that Knoll had numerous probation violations in a prior case, that he had "demonstrated an inability to remain law abiding" because he had new charges soon after his release from prison in February 2020, that he had an extensive criminal history with a score of six, and

that Knoll had completed treatment in June 2022 but continued to test positive for methamphetamine.

Knoll argued for a downward dispositional departure. Through his attorney, Knoll acknowledged that there were “some missed tests” and “some positive tests” and that his criminal history is “abundant.” But Knoll argued that the majority of his felonies stemmed from personal use and that he had been to and done well in treatment, that his driver’s license was reinstated after being canceled, that he is employed and doing well, that he has a residence, and that his mother supports him.

Knoll also personally addressed the district court, stating that he had kept his apartment for two years, that he got his license back, and that he is “a different person than [he] was.” He said he “never showed up for probation before” but that he has “been there every time [he’s] supposed to, and they’re not calling in lately.” He acknowledged that he has “forgotten a few days” and “missed a few of them.” When asked by the district court whether he was sober and working a program, Knoll said, “Not at the moment, no, but I know that I need to, and I just haven’t.”

The district court granted a downward dispositional departure on the possession count, imposing a stayed 18-month prison and five years of probation. It explained:

And, you know, it’s not going to be easy if you go [to] prison. You got an addiction, you got a real problem, and you need to work it. You need to figure it out, because it’s going to kill you or you’re going to end up in prison. I’m not going to send you to prison today. I’m going to give you a break because I want to see you succeed. I want to see you get sober.

After clarifying the conditions of the stay, the district court stated:

If [Knoll] tests positive, bring a violation in and we will execute the sentence. We'll send you to prison. But you're an addict. I don't think prison's the first step here, and I know you got a pretty extensive criminal history, but I'm giving you a shot, okay?

Thereafter, the state asked for the “basis for the dispositional departure.” The district court stated, “I’m finding he’s amenable to probation.” The state then dismissed four other cases against Knoll.

On April 20, 2023, the state appealed the district court’s decision to grant a downward dispositional departure for count I, the fifth-degree drug-possession offense. On May 30, 2023, the district court filed a departure report identifying its reasons for departure.

DECISION

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). “[Appellate courts] review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Although a district court has broad discretion over sentencing, a district court “can exercise its discretion to depart from the guidelines *only if* aggravating or mitigating circumstances are present and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations and citations omitted); *see* Minn. Sent’g Guidelines 2.D.1 (2020). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985). “[A] departure is

an abuse of discretion if the [district] court’s reasons are improper or insufficient and there is insufficient evidence of record to justify the departure.” *Soto*, 855 N.W.2d at 308. “When the district court gives improper or inadequate reasons for a *downward* departure, [appellate courts] may independently examine the record to determine whether alternative grounds support the departure.” *State v. Rund*, 896 N.W.2d 527, 532-33 (Minn. 2017).

The state argues that the district court abused its discretion by granting a downward dispositional departure because its reason for departing was not legally sufficient and the record does not support a dispositional departure. We first address the district court’s basis for departing and then whether the record justifies a departure.

A. The district court’s reason for departure was inadequate.

The state and Knoll dispute whether the district court’s reason for the departure¹—“finding [Knoll] amenable to probation”—is improper or inadequate.

The supreme court has clarified that “merely being amenable to probation—as opposed to being *particularly* amenable to probation”—does not justify staying a presumptively executed sentence. *Soto*, 855 N.W.2d at 308; *see* Minn. Sent’g Guidelines 2.D.3.a (identifying nonexclusive factors for a departure, including that a defendant “is

¹ Knoll asserts that the district court identified additional, legally adequate reasons in a departure report filed after the state filed its appeal. In its reply brief, the state requests that the departure report “be stricken from the record and that any reference to it as argued by [Knoll] also be stricken.” The state did not file a motion to strike. Generally, a departure will not be allowed “absent a statement of the reasons for the sentencing departure placed on the record at the time of sentencing.” *State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003). The parties agree that the departure report was filed several months after the sentencing hearing. As a result, we decline to consider the departure report when evaluating the district court’s reasons for departing.

particularly amenable to probation” (emphasis added)). “[I]nsisting on particular amenability to probation limits the number of departures and thus fosters uniformity in sentencing, which is a primary purpose of the Sentencing Guidelines.” *Soto*, 855 N.W.2d at 309. Several factors, including “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). These factors are often referred to as the *Trog* factors. *See State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

As the state argues, the district court found that Knoll was amenable—not *particularly* amenable—to probation. Knoll argues that the absence of the word “particularly” does not mean that the district court abused its discretion, relying on this court’s nonprecedential case, *State v. Freeman*, No. A15-1451, 2016 WL 363534 (Minn. App. Feb. 1, 2016), *rev. denied* (May 17, 2016). In that case, this court affirmed a district court’s grant of a downward dispositional departure, explaining, “Although the district court failed to use the word ‘particularly’ in its sentencing determination, the court’s analysis of Freeman’s amenability to probation and the underlying support for its decision fully demonstrate that Freeman meets the particularly-amenable-to-probation standard.” *Freeman*, 2016 WL 363534, at *2. But, unlike in *Freeman*, the district court here did not make findings related to the *Trog* factors during the sentencing hearing and did not analyze whether the *Trog* factors, or other facts, supported Knoll’s particular amenability to probation. Instead, the district court expressed that it was giving Knoll a “break” because

it “want[ed] to see [Knoll] get sober” and that it knew Knoll had “a pretty extensive criminal history, but [it was] giving [Knoll] a shot.” Furthermore, as discussed below, the record does not show that Knoll is particularly amenable to probation. As a result, *Freeman* is distinguishable and not persuasive here. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential decisions are not binding but may be considered for their persuasive value).

In sum, the district court’s finding that Knoll is “amenable to probation” is inadequate to support a departure. *See Soto*, 855 N.W.2d at 308-09.

B. The record does not justify a downward departure.

Although we conclude that the district court’s reason for departure was inadequate, we may nonetheless affirm a downward departure if the record justifies a departure. *See Rund*, 896 N.W.2d at 532-33 (“Reversal is required when the reasons given are improper or inadequate *and* the record contains insufficient evidence to justify the departure.” (emphasis added)). Thus, we consider whether the record contains substantial and compelling reasons to stay Knoll’s presumptive executed sentence. *See Soto*, 855 N.W.2d at 309-12 (considering whether the district court’s reasoning and the record provided support for the defendant’s particular amenability to probation relative to other defendants).

The state argues that the record does not support a dispositional departure because it establishes that Knoll is not particularly amenable to probation or to treatment in a probationary setting. Knoll argues that his commitment to change, his criminal history, and

his remorse demonstrate his particular amenability to probation and treatment and justify the downward departure.

First, Knoll argues that his “commitment to supervision and treatment” supports his amenability to probation and chemical dependency treatment. He points to his consistent contact with probation and to his completion of a treatment program. The state argues that Knoll is not particularly amenable to probation or treatment because, after completing the treatment program in June 2022, Knoll continued to test positive for methamphetamine and, at the time of the sentencing hearing in February 2023, was still using methamphetamine and was not enrolled in a treatment program.

The district court did not discuss Knoll’s commitment to supervision or treatment when finding Knoll was amenable to probation. Rather, at the February sentencing hearing, which was approximately seven months after Knoll completed treatment, the district court asked Knoll whether he was sober and working a program, and Knoll said, “Not at the moment, no, but I know that I need to, and I just haven’t.” Thus, although there is evidence that Knoll maintained consistent contact with probation, unlike his previous experiences with supervision, we are unpersuaded that the record shows a commitment to change making Knoll particularly amenable to probation or treatment.

Second, Knoll argues that his “criminal history also supported the decision to place him on probation” because his criminal history was primarily drug-related offenses. The state argues that Knoll has “a lengthy felony history and track record of violating terms of supervision and committing new offenses” and that Knoll committed additional offenses while on pretrial release.

Based on our review, the district court did not rely on Knoll's criminal history when finding Knoll amenable to probation. Rather, the district court told Knoll, "I don't think prison's the first step here, and I know you got a pretty extensive criminal history, but I'm giving you a shot." The record shows that Knoll had a criminal-history score of six, including one point because he was on supervised release at the time of this offense. And, as the state argues, Knoll's criminal history includes multiple probation violations, as well as new charges incurred during the proceedings here. Given these circumstances, we are unpersuaded that Knoll's criminal history justifies probation.

Finally, Knoll argues that the record shows his remorse and acceptance of responsibility because he pleaded guilty and "consistently vocalized concern for his past behavior and the risks it posed to the community."² The state responds that the district court did not find that Knoll was remorseful or that he accepted responsibility at the sentencing hearing.

Generally, "a district court is properly tasked with deciding whether a defendant's actions express genuine remorse and how much weight to give to that remorse." *Solberg*,

² The state provided transcripts of the January and February 2023 sentencing hearings, but it did not provide a transcript of Knoll's plea hearing. Knoll asserts that the state's failure to order the plea-hearing transcript limits this court's review of Knoll's remorse and acceptance of responsibility. It is the state's burden as the appellant to provide a sufficient record for this court's review. *See* Minn. R. Civ. App. P. 110.02, subd. 1(a) ("[T]he appellant shall . . . order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record."). But, at the sentencing hearing, neither Knoll nor his counsel argued that Knoll's conduct at the plea hearing supported a departure, and the district court did not reference Knoll's conduct at the plea hearing when granting the departure. And, on appeal, Knoll does not identify any conduct at the plea hearing showing his remorse or acceptance of responsibility. As a result, the absence of the plea-hearing transcript does not hinder this court's review.

882 N.W.2d at 626. As the state argues, the district court did not mention Knoll's remorse or acceptance of responsibility when it decided that he was amenable to probation. Thus, we are unpersuaded that Knoll's remorse or acceptance of responsibility justifies a departure in this case.

In sum, because the district court's finding that Knoll was amenable to probation is inadequate to support a downward departure and because the record does not contain sufficient evidence to justify a departure, we reverse and remand for the imposition of a guidelines sentence.

Reversed and remanded.